

H-2B Program Summary

Background

- H-2B workers are non-immigrant temporary workers that are hired for seasonal, temporary or peakload need in non-agricultural jobs for generally one year or less after which they return home.
- Prior to hiring an H-2B worker, employers must perform extensive outreach and recruitment domestically for American workers for 60 days after which state employment agencies certify that no American worker is available.
- Applications for H-2B workers can be submitted no sooner than 3 months before they are needed.
- The 66,000 cap on H-2B visas was established in 1990 and never increased.
- Hiring an H-2B workers is extraordinarily difficult, time consuming and expensive, but it is a critical last resort for employers that need but cannot find workers for their seasons.
- Because employers cannot apply for workers under the H-2B program more than 120 days prior to their actual demonstrated need, spring and summer employers have been frozen out of hiring the workers needed to operate their businesses.
- On March 9, 2004, the Department of Homeland Security announced that they would no longer accept applications for H-2B workers for the remainder of the fiscal year (October 1 through September 30) because the cap of 66,000 had been reached.
- This action severely impacted employers who rely on these individuals were left without employees during their busiest time of the year.
- Due to the extreme difficulty in finding temporary workers coupled with a strong economy, the more employers have been forced to use the H2B program which has resulted in the cap being met even earlier in the year: December 15, 2005 for the first half of FY06; April 4, 2006 for the second half of FY06; November 28, 2006 for the first half of FY07, and; March 16, 2007 for the second half of FY07 (the initial legislation “split” the cap, reserving 33,000 for the first half of the year and the rest for the second – see below).
- If the relief provision was not in effect, many businesses with spring and summer seasons could not find workers which would force them to cancel events, close part of their business (in the case of hotels, not open some rooms) and even lay off full-time American workers.

Legislative History

- Recognizing the central role the H-2B visa program serves in our economy, Congress approved by a vote of 94-6 an amendment offered by Senator Barbara Mikulski to H.R. 1268, the Emergency Supplemental Appropriations for Defense, the Global War on Terror, and Tsunami Relief Act, which provided:
 - A temporary exemption from the cap for prior H-2B workers who have participated in the program in one of the previous 3 years and successfully complied with all program requirements (this provision was initially expired September 30, 2006);
 - A reservation of 33,000 visas of the 66,000 numerical cap for each half of the federal fiscal year; and
 - The creation of a new anti-fraud fee of \$150 to be paid by the employer for each petition submitted for consideration.
- Because of the critical role the H-2B program represents to seasonal employers and the successful implementation of the trial exemption, Congress extended the exemption for one year as part of H.R. 5188, the Department of Defense FY2007 Authorization bill, in 2006.

Current Legislative Situation

- The temporary cap exemption relief expired on September 30, 2007.
- Senator Barbara Mikulski (D-MD) introduced S. 988 which would extend the cap relief provision by five years. Rep. Bart Stupak (D-MI) introduced H.R. 1843 which would make the relief permanent.
- Both bills have widespread bipartisan support.
- Organizations and companies from all over the country in many industries have expressed their support for these relief efforts.
- The H-2B Workforce Coalition sent a letter to every member of Congress signed by over 1,300 national and regional organizations and businesses from every state.
- Rep. Charles Boustany (R-LA) introduced H.Res. 1025 on March 6, 2008 to bring H.R. 1843 to the House floor for immediate consideration and plans on initiating a discharge petition to bypass regular order in an attempt to pass the bill.